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Office Supreme Court, U.S.

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No.

**In the  
Supreme Court of the United States**

OCTOBER TERM, 1982

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PEOPLE OF THE STATE OF ILLINOIS,  
*Petitioner,*

*vs.*

DENNIS WILLIAMS,  
*Respondent.*

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**ON PETITION FOR A WRIT OF CERTIORARI  
TO THE ILLINOIS SUPREME COURT**

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NEIL F. HARTIGAN,  
Attorney General, State of Illinois,  
188 West Randolph Street,  
Suite 2200,  
Chicago, Illinois 60601.  
*Attorney for Petitioner.*

RICHARD M. DALEY,  
State's Attorney,  
County of Cook,  
500 Richard J. Daley Center,  
Chicago, Illinois 60602,

MICHAEL E. SHABAT,\*  
KEVIN SWEENEY,  
Assistant State's Attorneys,  
*Of Counsel.*

\* Counsel of Record  
(312) 443-5496

**QUESTION PRESENTED**

Whether an attorney was incompetent to give effective assistance of counsel in a criminal case because he had engaged in serious misconduct in an unrelated probate matter.

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PEOPLE OF THE STATE OF ILLINOIS,  
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**ON PETITION FOR A WRIT OF CERTIORARI  
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---

Petitioner, People of the State of Illinois, respectfully prays that a writ of *certiorari* issue to review the judgment and opinion of the Illinois Supreme Court which was entered on November 18, 1982.

**OPINIONS BELOW**

On April 16, 1982 the Illinois Supreme Court entered an opinion affirming respondent's convictions for murder, aggravated kidnapping and rape. That opinion was never published and was subsequently withdrawn after respondent successfully petitioned for a rehearing. On November 18, 1982 the Illinois Supreme Court entered

a new opinion reversing respondent's convictions for murder, aggravated kidnapping and rape and remanding the matter for a new trial. The second opinion is reported at 93 Ill. 2d 309, 444 N.E. 2d 136 and appears herein as Appendix A. On December 9, 1982 petitioner filed a timely request for a rehearing of the second opinion, which was denied on January 28, 1983. (Appendix B)

### **JURISDICTION**

The opinion and judgment of the Illinois Supreme Court was entered on November 18, 1982. A timely petition for a rehearing of that opinion and judgment was denied on January 28, 1983, that order appearing herein as Appendix B. This petition was filed within 60 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. § 1257(3).

### **CONSTITUTIONAL PROVISION AT ISSUE**

#### **SIXTH AMENDMENT:**

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

### **STATEMENT OF THE CASE**

On May 11, 1978 Carol Schmal and her boyfriend Larry Lionberg were kidnapped, Carol Schmal was gang-

raped, and both Carol Schmal and Larry Lionberg were killed by bullets fired through the back of the head. Evidence presented in the trial court indicated that Schmal and Lionberg were kidnapped in the car of respondent Dennis Williams, that Williams and three co-defendants raped Carol Schmal, and that Williams fired the bullets which killed the two victims.

During the early morning hours of May 11 Larry Lionberg was working at a gas station in Homewood, Illinois where he was visited by Carol Schmal. The gas station was robbed and Lionberg and Schmal were kidnapped. The victims were driven to an abandoned townhouse in East Chicago Heights where Carol Schmal was taken to an upstairs room. There she was raped by Williams and three other men while a girl called Paula Gray held a cigarette lighter to illuminate the scene. Williams and two of the other men each raped Carol Schmal twice. Then Williams turned Carol Schmal over and fired two bullets through her head. After that Williams went downstairs and shot Larry Lionberg.

Paula Gray testified to these facts before the grand jury, but before trial she recanted her testimony and her evidence was not used against respondent until sentencing. At the jury trial the principal items of evidence against respondent were as follows:

1. A witness saw Williams enter the abandoned townhouse at the time of the rape and murders.
2. Three Caucasian hairs were recovered from Williams' car, and an expert testified that it was probable, but not certain, that the hairs had come from Carol Schmal and Larry Lionberg.
3. Sperm samples taken from Carol Schmal's vagina indicated intercourse with several men, one of whom had the same blood type as respondent.

4. A witness overheard respondent say concerning the victims, "I saw them jump when they shot them."
5. A fellow prisoner heard respondent admit that he "really shouldn't have took it from the lady," and further admit that he was "glad he took care of the guy" because "he kept running off with his mouth."

Respondent presented an alibi defense which was rejected by the jury, and Williams was convicted and sentenced to death.

At trial respondent and co-defendants Willie Rainge and Paula Gray were represented by attorney Archie Weston. Weston was an experienced lawyer who had been admitted to the Illinois bar in 1959. At one time he had served as president of the National Bar Association, the largest nation-wide organization of black lawyers.

After his conviction respondent argued in the Illinois Supreme Court that attorney Archie Weston had not given him effective assistance of counsel. The Illinois Supreme Court handed down an opinion rejecting that argument. (Appendix C) That court ruled that Weston had been a vigorous and able advocate, and that any criticisms of his representation which might be made with hindsight did not establish incompetency.

But after the original opinion in *Williams* was handed down an unrelated disciplinary matter involving attorney Archie Weston came before the Illinois Supreme Court. *In re Weston*, 92 Ill. 2d 431, 442 N.E. 2d 236 (1982) In that action it was established that Weston had engaged in negligent and unethical conduct as administrator of an estate. Some of the assets of the estate had been converted and title to a building belonging to the estate had been lost for failure to pay property taxes.

As a result of this misconduct the Illinois Supreme Court disbarred Weston.

Weston's misconduct as administrator of the estate had taken place before Williams' trial on charges of murder, aggravated kidnapping and rape. However all the proceedings which led to Weston's disbarment took place after Williams' trial was over. Although complaints had been made against Weston before the trial of Williams began, the probate court did not even remove Weston as administrator of the estate until after Williams was convicted. The probate court did not enter any monetary judgment against Weston until more than a year after the criminal trial was over. And Weston was not served with a formal complaint before the disciplinary commission until two years after Williams' conviction.

Nevertheless, the Illinois Supreme Court decided that Weston's misconduct as administrator of an estate indicated that he did not give respondent effective representation at the criminal trial. That court withdrew its original opinion and substituted an opinion reversing respondent's convictions for murder, aggravated kidnapping and rape. The new opinion stated that ". . .because of the newly acquired information concerning Williams' counsel, which we have concluded may well have had an effect on counsel's ability to represent his client in the trial of this capital case, we can no longer say with any degree of assurance, that Williams received the effective assistance of counsel guaranteed by the Constitution." (Appendix A, p. 12a)

## REASONS FOR GRANTING THE WRIT

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**WHERE THE TRIAL RECORD INDICATES THAT RESPONDENT RECEIVED ABLE AND VIGOROUS REPRESENTATION, THE FACT THAT RESPONDENT'S ATTORNEY WAS GUILTY OF MISCONDUCT IN AN UNRELATED MATTER WAS IRRELEVANT TO THE QUESTION OF WHETHER RESPONDENT RECEIVED EFFECTIVE ASSISTANCE OF COUNSEL.**

The first reason why certiorari should be granted is that this Court has recently taken jurisdiction in a case presenting essentially the same issue. On February 22, 1983 this Court granted certiorari in *United States v. Cronic*, No. 82-660. If certiorari is granted here, this case may either be consolidated with *Cronic* or this case may receive a summary disposition after *Cronic* is decided. Therefore certiorari may be granted in this case without consuming a large amount of this Court's scarce time and resources.

In *Cronic* the defendant received competent representation on mail fraud charges so far as could be determined from the trial record. The Tenth Circuit Court of Appeals reversed the convictions solely because the defense attorney lacked trial experience and time to prepare, although no prejudice to the defendant could be shown. *United States v. Chronic*, 675 F.2d 1126 (10th Cir. 1982).

The Illinois Supreme Court made a similar ruling here. As far as could be determined from the trial record, respondent Williams received competent representation. The Illinois Supreme Court reversed the convictions solely be-

cause complaints had been made concerning the misconduct of the defense attorney in an unrelated probate matter, although no prejudice to Williams was shown.

It is certain that the Illinois Supreme Court found that an examination of the trial record showed that Williams received effective representation. In its first opinion in this case that court said (Appendix C., p. 17a):

The record reflects that Williams was vigorously defended from his preliminary hearing through his sentencing. Counsel conducted able and searching examinations of witnesses both on direct and cross-examination, as well as extensive *voir dire* of the venire. He filed and argued many motions challenging various aspects of the State's case, and made strong jury presentations at the beginning and the end of the trial. In the totality of his conduct he performed ably. We have recognized many times that hindsight often dictates that a different strategy might have produced better results. However, such "errors" in judgment do not establish incompetency.

In its second opinion in this case the Illinois Supreme Court acknowledged that the sole reason it was reversing itself and vacating the convictions was that information had come to light concerning the defense attorney's misconduct in an unrelated probate matter. (Appendix A, p. 12a)

Thus the Illinois Supreme Court held that the mere filing of complaints concerning the conduct of a defense attorney in an unrelated matter was enough to prove incompetence in a criminal case, even when no incompetence could be proven from the trial record. It must be emphasized that, although before the trial in this case began complaints had been made against attorney



Weston to the probate court and the disciplinary commission, no action was taken against Weston until the trial in this case was over. Weston was not removed as administrator of the estate in question until two weeks after the trial in this case was over. Although a rule to show cause was filed in probate court before the criminal trial, there was no hearing on that rule until after the criminal trial, and Weston was not held in contempt until four months after the criminal trial had concluded. Proceedings before the Illinois Attorney Registration and Disciplinary Commission commenced two years after the criminal trial, and Weston was not finally disbarred until four years after the trial in this case.\*

Thus the Illinois Supreme Court has held that the mere existence of pending complaints of misconduct can render an attorney incompetent to try a criminal case, even when there is no evidence that the complaints affected the attorney's performance at trial and even when the trial record shows vigorous and able representation. This rule is both irrational and contrary to this Court's interpretation of the Sixth Amendment.

The holding of the Illinois Supreme Court is irrational because it is not a rare thing for an attorney to be accused of serious misconduct. It would be an intolerable burden on the courts and the public if criminal convictions had to be vacated when such unrelated complaints were later shown to be justified. Also, many other factors, such as a divorce, a personal bankruptcy or an illness, might arguably affect an attorney's ability to try a

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\* These facts are taken from the briefs in *In re Weston*, 92 Ill. 2d 431, 442 N.E. 2d 236 (1982). The Illinois Supreme Court took judicial notice of those briefs in its second opinion in this case. (Appendix A, p. 3a)

criminal case. When it is proven at a hearing that the attorney's ability to try a case was impaired, and that the defendant was prejudiced, then a conviction may have to be vacated. But when, as here, there is no evidence that the attorney's competence at trial was affected, and there is no showing of prejudice to the defendant, then the conviction should stand.

This Court has indicated that a violation of the Sixth Amendment right to effective assistance of counsel will not be assumed, but must be demonstrated. *Cuyler v. Sullivan*, 446 U.S. 335 (1980). When a defendant alleges that he has been deprived of competent representation, this Court has indicated that it is the defendant's burden to show "gross error" on the part of his attorney. *McMann v. Richardson*, 397 U.S. 759, 772 (1970). Thus the Illinois Supreme Court erred when it assumed without proof that Williams had been deprived of competent representation, and when it reversed the convictions of Williams even though no "gross error" by defense counsel occurred during the trial.

The ruling of the Illinois Supreme Court here was contrary to the holding of this Court in *Michel v. Louisiana*, 350 U.S. 91 (1955). In *Michel* the defense attorney, who was 76 or 77 years old and in poor health, failed to move to quash the indictment. If the motion to quash had been made it would ultimately have been successful, since blacks had been systematically excluded from the grand jury. The defendant was convicted and sentenced to death. Nevertheless, this Court held that the defendant in *Michel* had received competent representation. By that standard neither attorney Weston's problems in the probate court, nor Weston's failure to file a motion to sup-

press the search of the car deprived respondent Williams of effective assistance of counsel.

In other more recent decisions this Court has consistently held that a failure to make a key motion or objection is not enough by itself to prove incompetent representation in a criminal case. For example, a defendant is not deprived of competent representation even when his attorney fails to object to a jury instruction misstating the burden of proof. *Engle v. Issac*, ..... U.S. ...., 102 S. Ct. 1558, 1574 (1982). A defendant may receive adequate representation even when his attorney does not confer with him until immediately before trial and fails to properly move to suppress a search of the defendant's house. *Chambers v. Maroney*, 399 U.S. 42, 53-54, 57-58 (1970). The failure to file a motion to suppress a confession does not in and of itself deprive a defendant of effective assistance of counsel, even when the motion would probably have been granted. *Parker v. North Carolina*, 397 U.S. 790, 796-797 (1970); *McMann v. Richardson*, 397 U.S. 759, 770-771 (1970). And this Court has held that representation may be "within the range of competence demanded of attorneys in criminal cases" even when the defense failed to move to quash a voidable indictment. *Tollett v. Henderson*, 411 U.S. 258, 267-268 (1973).

But this Court has not established a single definite standard for judging the adequacy of representation by counsel in a criminal case. As a result, conflicting standards have been followed by different federal Circuit Courts of Appeal. *Dyer v. Crisp*, 613 F.2d 275 (10th Cir. 1980); See Annotation, "Modern Status of Rule as to Test in Federal Court of Effective Representation

by Counsel," 26 ALR Fed. 218. Another result has been that in Illinois a bizarre situation has developed whereby criminal convictions are reviewed under one constitutional standard in the state appellate courts, and then are reviewed under a different constitutional standard in federal habeas corpus proceedings.

The Second Circuit Court of Appeals will vacate a conviction for incompetence of counsel only if the representation amounts to a "farce or mockery". *United States v. Aulet*, 618 F.2d 182 (2d Cir. 1980); *LiPuma v. Commissioner*, 560 F. 2d 84 (2d Cir. 1977). Other circuits will vacate a conviction if the defendant has been deprived of "reasonably effective" or "reasonably competent" representation. *Jones v. Wainwright*, 604 F. 2d 414 (5th Cir. 1979); *United States v. Bosch*, 584 F. 2d 1113 (1st Cir. 1978); *Cooper v. Fitzharris*, 551 F. 2d 1162 (9th Cir. 1977). And still other circuits use a standard of representation "within the range of competence demanded of attorneys in criminal cases." *Marzullo v. Maryland*, 561 F. 2d 540 (4th Cir. 1977); *United States v. Moore*, 554 F. 2d 1086 (D.C. Cir. 1976). There is a need to establish a single standard to be used in determining whether a defendant in a criminal case has received effective assistance of counsel.

The situation in Illinois illustrates the problems that arise from the lack of a definite standard. The Illinois Supreme Court follows a different standard depending on whether counsel is retained or appointed. If a defendant retains his own lawyer, then representation is adequate unless the trial has been reduced to a "farce or sham." *People v. Murphy*, 72 Ill. 2d 421, 381 N.E. 2d 677 (1978). But if counsel is appointed, then convictions will be vacated only in cases of "actual incompetence" causing "substantial prejudice". *People v.*

*Lewis*, 88 Ill. 2d 129, 153-154, 430 N.E. 2d 1346, 1357-1358 (1981). The Seventh Circuit Court of Appeals, which reviews Illinois convictions in habeas corpus proceedings, will vacate a state conviction unless the defendant has been afforded a "minimum standard of professional representation." *United States ex rel. Williams v. Twomey*, 510 F. 2d 634 (7th Cir. 1975). Thus criminal convictions in Illinois are reviewed according to different and conflicting interpretations of the Sixth Amendment.

In summary, there was no evidence that attorney Weston's problems in the probate court affected his performance at trial in this case, so the Illinois Supreme Court erred by vacating the convictions because of those problems. In fact, prior decisions of this Court indicate that attorney Weston gave competent representation to respondent Williams. In addition, there is a need for this Court to grant certiorari and establish a definite standard for judging whether a defendant in a criminal case has received effective assistance of counsel.

Two further points should be made. First, the opinion of the Illinois Supreme Court in this case indicates that its decision was based on federal constitutional law. Second, even if the convictions of respondent Williams are affirmed, he will still be entitled to post-conviction hearings at which he can attempt to present evidence that his attorney was unable to competently represent him at trial.

The Illinois Supreme Court said that it could "... no longer say with any degree of assurance, that Williams received the effective assistance of counsel guaranteed by the Constitution." (Appendix A, p. 12a) The general reference to "the Constitution", rather than a specific reference to any state provision, indicates that the

decision was based on the Constitution of the United States. In any event, the right to effective assistance of counsel in Illinois is equal to, but not greater than, the right granted by the Sixth Amendment. *People v. Lewis*, 88 Ill. 2d 129, 153-154, 430 N.E. 2d 1346, 1357-1358 (1981); *People v. Murphy*, 72 Ill. 2d 421, 435-436, 381 N.E. 2d 677, 684-685 (1978); *People v. Redmond*, 50 Ill. 2d 313, 315, 278 N.E. 2d 766, 767 (1972); *People v. Somerville*, 42 Ill. 2d 1, 5, 245 N.E. 2d 461, 464 (1969).

Even if the convictions of respondent Williams are affirmed, he will still have a right to hearings in both state and federal court in which he may attempt to show actual incompetence on the part of his trial counsel. Specifically, Williams is entitled to hearings at which he may try to present evidence that attorney Weston's problems rendered Weston incapable of properly trying a criminal case. Under the Illinois Post-Conviction Hearing Act a defendant may assert incompetence of the part of trial counsel, and present evidence from outside the trial record in support of that assertion. Ill. Rev. Stat. 1981, Ch. 38, sec. 122-1; *People v. Thomas*, 38 Ill. 2d 321, 231 N.E. 2d 436 (1967). Williams would have a right to a similar hearing in federal habeas corpus proceedings. 28 U.S.C. § 2254; *Skipper v. Wainwright*, 598 F. 2d 425 (5th Cir. 1979). It is understandable that a court would want to be sure that a defendant had received effective assistance of counsel in a case in which a death sentence had been imposed. However Williams is entitled to hearings in state and federal court at which any evidence relevant to competence of counsel may be examined. If evidence shows that his trial attorney was actually incompetent, then his convictions will be vacated. But the Illinois Supreme Court misinterpreted the Sixth Amendment when it reversed the convictions in the ab-

sence of evidence of incompetence and where the trial record showed vigorous and able representation.

Accordingly, this Court should review the decision of the Illinois Supreme Court in this case. At a minimum it may be appropriate to remand this matter for further consideration in the light of this Court's pending decision in *United States v. Chronic*, No. 82-660.

### CONCLUSION

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For the foregoing reasons, the People of the State of Illinois respectfully pray that a writ of certiorari issue to review the judgment of the Illinois Supreme Court.

Respectfully submitted,

NEIL F. HARTIGAN,  
Attorney General, State of Illinois,  
188 West Randolph Street,  
Suite 2200,  
Chicago, Illinois 60601.  
*Attorney for Petitioner.*

RICHARD M. DALEY,  
State's Attorney,  
County of Cook,  
500 Richard J. Daley Center,  
Chicago, Illinois 60602,

MICHAEL E. SHABAT,\*  
KEVIN SWEENEY,  
Assistant State's Attorneys,  
*Of Counsel.*

\* Counsel of Record  
(312) 443-5496

## APPENDICES



## APPENDIX A

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### SECOND AND FINAL OPINION OF THE ILLINOIS SUPREME COURT IN *PEOPLE* vs. *DENNIS WILLIAMS*

Docket No. 51870—Agenda 36—September 1981.

THE PEOPLE OF THE STATE OF ILLINOIS, Appellee, v. DENNIS WILLIAMS, Appellant.

JUSTICE UNDERWOOD delivered the opinion of the court:

Following a jury trial in the circuit court of Cook County, defendant Dennis Williams was convicted of two counts of murder, two counts of aggravated kidnapping, and rape. A separate sentencing jury found the necessary aggravating factors and that there were no mitigating factors sufficient to preclude imposition of the death sentence. The court accordingly sentenced defendant to death for the murders and to concurrent extended terms of 60 years for the other offenses.

Defendant appealed directly to this court pursuant to article VI, section 4(b), of our 1970 constitution, and on April 16, 1982, we filed an opinion in which we affirmed defendant's convictions and death sentence over his objection *inter alia*, that he was denied the effective assistance of counsel. While Williams' petition for rehearing was pending, a disciplinary case involving his attorney, Archie Benjamin Weston (*In re Weston* (Oct. 22, 1982), No. 55675), was orally argued in this court. As a result of the additional information with which we were presented, of which we had been unaware during the preparation and filing of our *Williams* opinion, we directed the clerk of this court to forward copies of the record, briefs and taped argument in *In re Weston* to counsel for both sides in *Williams*. We then requested and subsequently re-

ceived suggestions from the attorneys concerning the relevance of the disciplinary matters to the capital case. We thereafter allowed Williams' petition for rehearing.

Williams and codefendants Willie Rainge and Kenneth Adams were charged by information with the aggravated kidnapping and murders of Larry Lionberg and Carol Schmal, the rape of Carol Schmal, armed robbery, and armed violence. Another codefendant, Paula Gray, was indicted several months later for the same murders and rape and for perjury. Mr. Weston represented Williams, Rainge and Gray; Adams retained separate counsel. The four were tried in September and October 1978 in one courtroom by two separate juries. One jury heard evidence relevant only to defendants Williams, Rainge and Adams, and the other jury heard evidence relevant only to Gray. Both juries heard evidence relevant to all four defendants. The procedure was suggested by the State because Paula Gray had made statements inadmissible against the others under *Burton v. United States* (1968), 391 U.S. 123, 20 L. Ed. 2d 476, 88 S. Ct. 1620. The substance of the *Burton* problem was also the basis of the perjury charge against Paula Gray. She had given sworn testimony to a grand jury implicating the other three defendants in the abduction, murders and rape. However, at their preliminary hearing she recanted her grand jury testimony under oath, claiming that the police had forced her to tell a "lie" to the grand jury. The State intended to use these statements in its case against Gray but realized that under *Burton* they were inadmissible against Williams, Rainge and Adams.

Williams, Rainge, Adams, and Gray were convicted of murder and rape. Williams and Rainge were also convicted of aggravated kidnapping, and Gray was convicted of perjury. Williams and Rainge requested a new sentencing jury, which returned a death penalty verdict on February 6, 1979, against Williams. Rainge was sentenced to concurrent terms of natural life imprisonment for the murders and to extended terms of imprisonment for the

other offenses. Adams was sentenced, after a bench hearing, to extended terms of imprisonment, and Gray, in a later hearing, was also sentenced to extended terms of imprisonment. Those convictions have been affirmed. *People v. Gray* (1980), 87 Ill. App. 3d 142, cert. denied (1980), 445 U.S. 944, 63 L. Ed. 2d 777, 100 S. Ct. 1340; *People v. Rainge and Adams* (1st Dist. June 7, 1982), No. 79-565 (petition for rehearing pending).

In *In re Weston*, the Hearing Board and Review Board of our Attorney Registration and Disciplinary Commission both recommended that respondent, Archie Weston, be disbarred because of misconduct involving his handling of the estate of his client, Ella C. Graham, who died intestate in 1974. In April 1978, a son of one of the heirs complained to the Attorney Registration and Disciplinary Commission. Respondent was informed of the complaint, and the Inquiry Board forwarded a copy of the complaint to the judge of the probate division of the circuit court of Cook County. In August, a rule was issued by that court upon respondent to show cause why he should not be held in contempt of court. After securing a continuance, respondent failed in probate court in November 1978 and was removed as administrator. He was subsequently adjudged in contempt of court. (That order was later quashed after partial payment of amounts which the court had found owing.) The administrator *de bonis non* also filed a petition to surcharge respondent for waste and neglect, and a judgment for \$23,000 was thereafter entered against him, apparently resulting in a sheriff's sale of his home.

The Hearing Board found that respondent neglected legal matters entrusted to him, that he committed acts prejudicial to the administration of justice and acts which intentionally caused damage and prejudice to his client, and that he commingled and converted a client's funds, all in violation of various disciplinary rules of the Illinois Code of Professional Responsibility. Respondent

neither answered the disciplinary complaint nor appeared to defend himself. The allegations of the complaint thus stood admitted, and we held them adequately supported by the evidence. We accordingly ordered that respondent be disbarred. *In re Weston* (Oct. 22, 1982), No. 55675.

Williams urges that the matters disclosed by the record and proceedings in *In re Weston* provide further support for his contention that he was denied the effective assistance of counsel, whereas the State submits that the evidence of counsel's performance in an unrelated matter is irrelevant to the question of counsel's effectiveness in the capital case. We agree that ordinarily the record of counsel's performance at the trial in which his performance is questioned is the only relevant consideration in determining whether his client was afforded the effective assistance of counsel. We believe, however, that, in the unique circumstances of this capital case, fundamental fairness requires us to examine the additional information now before us concerning counsel's misconduct and the events occurring during the same period that he represented three defendants in a capital case to determine whether it has any bearing on the quality of that representation. We consider first, however, whether the evidence was sufficient to prove defendant guilty beyond a reasonable doubt.

Resolution of factual disputes and the assessment of the credibility of the witnesses, is, of course, for the jury (*People v. Carlson* (1980), 79 Ill. 2d 564, 583; *People v. Zuniga* (1973), 53 Ill. 2d 550, 559), and we will not reverse a judgment of conviction unless the evidence is so unsatisfactory or improbable that a reasonable doubt as to the guilt of defendant remains (*People v. Lewis* (1981), 88 Ill. 2d 129, 151; *People v. Carlson* (1980), 79 Ill. 2d 564, 583; *People v. Clark* (1972), 52 Ill. 2d 374, 387).

The evidence showed that Larry Lionberg worked a night shift at a gas station at 180th Street and Halsted

near Homewood. He was visited there by his fiancée, Carol Schmal, and another couple. Larry and Carol were last seen by their friends about 2:15 a.m. on May 11, 1978, although Larry apparently made a call to a former employer from the station about 2:30 a.m. At 6:30 a.m., the owner arrived at the station and found it unattended, open and ransacked. Some money and merchandise valued at \$300 were missing. Police were called. Carol's car was found at the station; her purse was on the front seat.

The victims' bodies were found on May 12 at about 10:30 a.m. in East Chicago Heights. The investigating officer, P. J. Pastirik, testified that Larry was found face down in a nearby field, shot in the head twice and the back once. Carol was found in an upstairs room of a nearby abandoned townhouse at 1528 Canon Lane. Carol, also face down, had been shot twice in the head. She was clothed in knee-socks and a partially removed sweater and brassiere, and lying on a pair of jeans. A piece of plywood was covering the lower part of her body. The investigating medical officer said that she had been shot where she was found but could not say with certainty that Larry had been. Tests run on a vaginal swab taken from Carol at that time indicated that she had had intercourse within the past 36 hours. There was no trauma to the vaginal area; no foreign pubic hairs were found. Neither Carol's boots nor the murder weapon was recovered. Testimony indicated that bullet fragments recovered from each body had been fired from the same gun. Powder burns around Carol Schmal's wounds indicated the weapon was fired from a distance of six to 12 inches.

While Officer Pastirik was at the scene the substance of two anonymous calls was relayed to him. The calls came from an unidentified male with a "black voice" who said that the people who committed the murders were at the scene of the investigation. He also described a red Toyota and gave a license number reported to the officer as GA 1390. It is unclear whether the caller connected

this number with the red Toyota. Officer Pastirik testified that as he and a partner walked towards a rather large crowd that had gathered, two black men began walking briskly away. The men were stopped and questioned when they reached a red Toyota parked nearby. Dennis Williams, Verneal Jimmerson and the car were taken to the station. Williams was never released. (The charges against Jimmerson were dropped when Paula Gray recanted her testimony at the preliminary hearing.) Defendants Rainge and Adams were questioned later that evening but were released; however, Adams' car, a beige Toyota bearing plates numbered GX 1390, was held.

The following day, May 13, Officer Pastirik interviewed Charles McCraney, who lived on Hammond Lane in East Chicago Heights. He admitted to making the anonymous phone calls and identified both cars as those he had seen in the early morning hours of May 11. At this time, or shortly thereafter, McCraney also told the police what he had witnessed on the 11th but said he would not identify anyone until the police promised to relocate him. He eventually identified all four defendants as people he had seen in the early morning hours of May 11, near 1528 Canon Lane.

That evening Officer Pastirik interviewed Paula Gray and her sister, Paulette, who had come to the station with their mother. The substance of the conversation with the Grays was not admissible in the male defendants' trial, but it was at this time that Paula first told her story to police. Her mother was apparently present during some of the questioning. According to Pastirik's testimony, which did come out at the sentencing hearing, Paulette Gray told him that Paula had told her and her mother about the murders on the morning of May 11. Paula apparently went with police to the scene later that night to point out where the gun was thrown in the creek and where Carol Schmal's boots were put. They were never found. Later that evening Rainge and Adams were taken into custody and an assistant State's

Attorney from the Felony Review Unit questioned the male defendants and the Gray sisters. A few days later Paula Gray gave grand jury testimony substantially the same as the story she told Officer Pastirik. However, as earlier noted, at the preliminary hearing for the male defendants, she recanted. She was indicted on September 1 and retained Williams' counsel to represent her. Jury selection began on September 14.

The State's case included testimony by one parent of each of the victims, who testified as a "life and death" witness. The owner of the gas station and the friends who had last seen the victims placed the time of abduction as between 2:30 and 6:30 a.m. on May 11. Various police witnesses testified about discovering the bodies and receiving the anonymous phone calls.

Charles McCraney testified before both juries. He stated that as of May 11 he had been a resident of 1533 Hammond Lane for about two weeks. From a vantage point in one upstairs room he could see his car parked on Hammond Lane as well as several other cars which were at various times parked about 10 feet away from his, in front of Paula Gray's home at 1525 Hammond Lane. From a window on the other side of his home he could see across a courtyard to an abandoned townhouse at 1528 Canon Lane, where the body of Carol Schmal was later found.

McCraney testified that on the night of May 10-11 he was home playing his guitar and rehearsing music. Because he was worried about the "teenagers" in the street possibly tampering with his car, every 15 minutes or so he would go upstairs to look out his window and check on it. Continuously parked in the street near his car, from about 11 p.m., were a blue Chevrolet and a beige Toyota (Adams'). At various times a yellow Vega (Rainge's) and a red Toyota (Williams') were also there. Some time between 2:30 a.m. and 3 a.m. the red Toyota appeared and parked next to the Chevrolet and beige Toyota. Within a few minutes the yellow Vega drove



up very fast. McCraney saw the red Toyota then drive to the street light by his car; the driver, whom he identified as Williams, got out and broke the light. Williams then returned to the parked cars and picked up the driver of the Vega, whom McCraney identified as Rainge, and drove off.

McCraney, now more worried about his car, went out to check on it. He saw Paula Gray and an unidentified man sitting in the Chevrolet. He did not "pay attention" to the beige Toyota and returned to his music. Within a few minutes he heard a car revving its engine in the courtyard, and he returned to his upstairs window. The red Toyota was stuck in the mud near 1528 Canon Lane. From his other window he saw four people leave the beige Toyota and run, some through an abandoned building or through the courtyard, toward 1528 Canon. He identified Adams as one of the group. The red Toyota was now freed; Williams and Rainge got out and joined the group, now six to eight people, and entered the building at 1528 Canon. He said that he saw no women nor any "white people" in this group.

McCraney, feeling his car was now safe, paid no further attention to the activity outside, but about 11½ hours later he heard a shot from the direction of the townhouse the group entered. He had heard shots in that neighborhood frequently and took no action. During daylight, a few hours later that morning, he saw Williams again pull up to the now-broken street light and kick the glass out of the street.

The next day McCraney saw Williams in the crowd that had gathered in the field around the body of Larry Lionberg. McCraney said Williams was asking people there, jokingly, whether they had shot "those people." He overheard him say, again jokingly, "I saw them jump when they shot them." This was prior to Carol Schmal's body being found. When it was found, McCraney put "two and two together" and made his anonymous phone calls.



David Jackson was called to testify about a conversation between Williams and Rainge that took place on May 15. Jackson overheard these two talking in a cell in the intake section of the Markham police station. Jackson, who had been arrested for burglary, was in the cell with Williams, Rainge, Adams and Jimmerson. Williams and Rainge were talking; the other two sat apart on the other side of the cell. Jackson said that Williams and Rainge each admitted to having had sex the night before and that they "really shouldn't have took it from the lady." Later Williams told Rainge he was "glad he took care of the guy" because "he kept running off with his mouth." He reassured Rainge not to worry because "they're gone" and "the piece" would never be found. Williams also said he would have to "get somebody to take care of the lady that seen them in the neighborhood the day they got arrested." On cross-examination, Jackson said Adams and Jimmerson did not take part in the conversation. He also said that he had a grudge against Williams and Rainge because his wife had, some time before, identified them as the two who had stolen a television from her at gunpoint and roughed up his kids.

The balance of the State's case dealt with physical evidence. Tests run on the vaginal swab showed seminal fluid from a person with type A blood. They also indicated the possibility of intercourse with persons having type A blood with a trace of "'H' substance," and, possibly, type O blood. This indicated that Carol Schmal had had intercourse with someone who secreted these blood types in their body fluids. Williams had type A blood; Adams had type A with a slight trace of "'H' substance"; Rainge had type O blood. All three secreted their blood types in their body fluids. Carol Schmal also had type O blood, as did Larry Lionberg, but it was impossible to tell if either of them was a "secretor." However, if Carol was, this could explain the positive test for O type blood or for A type with "'H' sub-

stance." It does not appear, however, that it would account for the positive test for type A blood.

Three hairs were also admitted into evidence. These were taken from Williams' car, two from the back seat and one from the trunk. The hairs were said to be from Caucasians. There were no dissimilarities between one of the hairs from the back seat and one from the trunk and the hair of Carol Schmal. The other hair from the back seat equally matched the hair of Larry Lionberg. The expert who testified said he could not say with certainty that the hairs in fact came from the victims. On redirect examination he said that in a Royal Canadian Mounted Police study of relatives, it was found that there was a 1 in 4,500 chance that similar hairs, that is, hairs matching in 99.9% of their characteristics, came from different heads. The expert testified that it would be less likely that matching hairs would come from different heads among the general population, but he refused to speculate about the odds when three similar hairs were found.

Before the State rested, the jury was taken out to the East Chicago Heights neighborhood, over defense objection, to view the scene. The trip was taken during the day for the safety of the jury. When they returned the State recalled Officer Pastirik to testify about changes in the area since the day of the murders. At the close of the State's case the court denied defense motions for directed verdicts.

Williams, Rainge and Adams presented alibi defenses. Williams said he got home about 1:30 a.m. after taking Jimmerson and his family to Chicago. He said he stopped just before going home, for about five minutes, to talk to Adams and Gray, whom he found in Adams' car parked in front of Gray's home. He then went straight home and did not get up until about 9 a.m.

Rainge and his girlfriend both testified that they were together at Rainge's home with other members of his family (who were already in bed) until about 3:30 a.m.

He also testified that on May 11 he worked from 9 a.m. until 7 p.m.

Adams' mother testified that her son was home asleep about 3:15 and he was still asleep at 7 a.m. when she got up. After Adams' attorney put two documents in evidence, one indicating that license number GA 1390 was registered to Virginia Miller of Galesburg, and the other indicating that there had been rainfall in the Chicago area in the morning hours of May 11, the defense rested.

In rebuttal, the State called two witnesses. Virginia Miller testified that she had owned a 1969 Toyota, license number GA 1390 in May of 1978; that in March of 1978 a license plate was lost or stolen; and that her car had not been in Cook County during May 1978 and for some time prior to that date. The State also called an 11-year-old boy (one of the boys who found Lionberg's body) who testified that at about 5 p.m. on May 11 he had seen Ränge in the field where the body was found. Closing arguments followed.

In our judgment the evidence warranted submission of the case to the jury. Although the evidence is in large part circumstantial, it does tend toward "a satisfactory conclusion" and produces "a reasonable and moral certainty" that the defendant committed the murders and rape. (*People v. Williams* (1977), 66 Ill. 2d 478, 485; *People v. Marino* (1970), 44 Ill. 2d 562, 580; *People v. Bernette* (1964), 30 Ill. 2d 359, 367; *People v. Magnafichi* (1956), 9 Ill. 2d 169, 173; *People v. Fletcher* (1978), 72 Ill. 2d 66, 71.) As this court has often stated: "'The jury need not be satisfied beyond a reasonable doubt as to each link in the chain of circumstances relied upon to establish guilt, but it is sufficient if all the evidence, taken together, satisfies the jury beyond a reasonable doubt of the accused's guilt.'" *People v. Foster* (1979), 76 Ill. 2d 365, 374, and cases cited therein.

The evidence, if believed by the jury, establishes that Williams and others were present in the area where the

murders occurred and at the time they must have occurred. The jury was not bound to credit the alibi defense of Williams as against the eyewitness testimony which contradicted it. (*People v. Berland* (1978), 74 Ill. 2d 286, 307; *cert. denied* (1979), 444 U.S. 833, 62 L. Ed. 2d 42, 100 S.Ct. 64; *People v. Jackson* (1973), 54 Ill. 2d 143, 149.) The circumstances of the disappearance of the victims, the places in which they were found, the state of undress of Carol Schmal, and the presence of seminal material that reacted positively to a test for type A blood indicate that they were forcibly abducted, that Carol Schmal was raped, and that Larry Lionberg and Carol Schmal were murdered. The net of circumstantial evidence tends forcibly toward a conclusion that Dennis Williams was among those responsible for the crimes. He was present at the time and place; his blood type matches that of one who raped Carol Schmal, hairs matching those of both victims were found in his car; two witnesses heard him make statements which suggested that he was involved in both the murders and the rape. Circumstantial evidence may be used to establish guilt (*People v. Williams* (1977), 66 Ill. 2d 478, 484; *People v. Barnette* (1964), 30 Ill. 2d 359, 367; *People v. Russell* (1959), 17 Ill. 2d 328, 331), and any inconsistencies or lack of "links" in this chain are at most minor. We believe, therefore, that the evidence, if believed by the jury as it apparently was, was sufficient to prove defendant guilty beyond a reasonable doubt. Nevertheless, because of the newly acquired information concerning Williams' counsel, which we have concluded may well have had an effect on counsel's ability to represent his client in the trial of this capital case, we can no longer say, with any degree of assurance, that Williams received the effective assistance of counsel guaranteed by the Constitution. We accordingly conclude that he must be given a new trial.

Williams cites numerous instances of inaction by counsel to demonstrate that he was denied the effective assistance of counsel, including: the failure to make a motion to

suppress the physical evidence seized from Williams' car—evidence which was perhaps crucial to the State's case; the failure to object to the testimony concerning the Canadian study on hair comparisons; the failure to object to prejudicial material received by Williams' jury which it is alleged was designed to insure that the jurors would know that Paula Gray had accused her codefendants; the failure to object to the rebuttal testimony of the 11-year-old boy; the failure to object to the information imparted to the jury concerning the manner in which its verdict would be reviewed; the failure to object to testimony concerning the good character of the decedents; the failure to demand a full evidentiary hearing for the purpose of discovering the existence of a written statement allegedly made by Charles McCraney within a few days of the murder; and the failure to make a motion for a new trial.

We originally examined, under our Rule 615(a) (73 Ill. 2d R. 615(a)), the more significant errors alleged to have occurred, notwithstanding the absence of objections and the failure to make a motion for a new trial, and found no plain error. We indicated that counsel's decision not to make a motion to suppress was perhaps an error in judgment and that such errors do not establish incompetency (e.g., *People v. Washington* (1968), 41 Ill. 2d 16,21; *People v. Green* (1967), 36 Ill. 2d 349, 351). However, we are now aware, for the first time, of the unique circumstances under which counsel in this case was operating at the time of the capital trial. In the light of these facts, we can no longer characterize counsel's decision not to make the motion to suppress the hair evidence or to take other action on his client's behalf as professional misjudgments made with full knowledge of the applicable law and the facts. Moreover, while we do not believe that the burden of defending three clients for capital murder before two juries, standing alone, necessarily reduced counsel's effectiveness, that fact in view of the new information now before us cannot be disregarded. In our original opinion we noted the additional burdens the simultaneous

trials before separate juries placed on both the court and counsel, and for this and other reasons cautioned against their future use. That added burden, of course, accentuates the problems now posed.

It is apparent to us that the unique facts in this case require that we forgo application of either of the established tests, normally applied in determining whether a defendant has been deprived of his constitutional right to the assistance of counsel. (See, e.g., *People v. Lewis* (1981), 88 Ill. 2d 129, 153-54 (appointed counsel); *People v. Murphy* (1978), 72 Ill. 2d 421, 436 (retained counsel).) As we originally indicated, the voluminous record here shows that there were many instances where counsel made able and vigorous objections and presentations, and we cannot characterize his performance as actual incompetence or as of such a low caliber as to reduce the trial to a farce or sham. We believe, however, considering the unique circumstances and sequence of events in this capital case, which will rarely, if ever, be duplicated, that the interests of justice require that Dennis Williams be granted a new trial.

Accordingly, the judgment of the circuit court is reversed and the cause is remanded to that court for a new trial.

*Reversed and remanded.*

**APPENDIX B**

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**ORDER OF THE ILLINOIS SUPREME COURT  
DENYING THE PETITION FOR A REHEARING  
FILED BY THE PEOPLE OF THE STATE  
OF ILLINOIS**

**ILLINOIS SUPREME COURT  
JULEANN HORNYAK, CLERK**

Supreme Court Building  
Springfield, Ill. 62706  
(217) 782-2035

January 28, 1983

**Mr. Michael E. Shabat**  
Asst. State's Attorney  
Criminal Appeals Division  
Richard J. Daley Center, Rm. 500  
Chicago, Ill. 60602

**No. 51870 — People State of Illinois, appellee, vs. Dennis  
Williams, appellant. Appeal, Circuit Court  
(Cook).**

The Supreme Court today **DENIED** the Petition for  
Rehearing filed in the above entitled cause.

Very truly yours,

/s/ Juleann Hornyak  
Clerk of the Supreme Court

## APPENDIX C

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### EXCERPT FROM THE ORIGINAL OPINION OF THE ILLINOIS SUPREME COURT IN *PEOPLE vs. DENNIS WILLIAMS*

(Note: The original opinion in *People v. Williams* affirmed the convictions. That opinion was later withdrawn. Because of its great length, the original opinion is not reproduced in full here, but the portions relevant to effective assistance of counsel are given below.)

Slip Opinion, Pages 20-22:

Defendant argues, however, that the burden undertaken by his attorney of defending three clients for capital murder before two juries necessarily reduced his effectiveness. In support of this defendant points to two instances alleged to demonstrate incompetency: the failure to move to suppress the evidence taken in the search of his car, and the failure to move for a new trial.

The failure to move for a new trial does not indicate such inadequacy of counsel as to deprive defendant of a fair trial. As discussed earlier, our Rule 615(a) (73 Ill. 2d R. 615(a)) enables us to review the record. (See *People v. Carlson* (1980), 79 Ill. 2d 564, 576; *People v. Precup* (1978), 73 Ill. 2d 7, 16-17; *People v. Pickett* (1973), 54 Ill. 2d 280, 282.) A defendant is entitled to competent, not perfect, representation. (*People v. Berland* (1978), 74 Ill. 2d 286.) Even in the case of appointed counsel, as to whom the standard measuring competence is at least as high as that of retained counsel, a new trial will be granted on incompetency grounds only if counsel "was actually incompetent, as reflected in the performance of his duties as trial attorney, and if this incompetence produced substantial prejudice to the defendant without which the result of the trial would probably



have been different.” (*People v. Greer* (1980), 79 Ill. 2d 103, 120-21, and cases there cited.) Competency is determined on the basis of the totality of counsel’s conduct at trial. (*People v. Murphy* (1978), 72 Ill. 2d 421, 437.

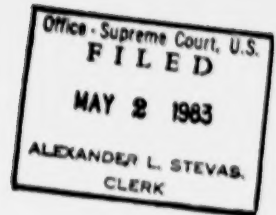
The record reflects that Williams was vigorously defended from his preliminary hearing through his sentencing. Counsel conducted able and searching examinations of witnesses both on direct and cross-examination, as well as extensive *voir dire* of the venire. He filed and argued many motions challenging various aspects of the State’s case, and made strong jury presentations at the beginning and the end of the trial. In the totality of his conduct he performed ably. We have recognized many times that hindsight often dictates that different strategy might have produced better results. However, such “errors” in judgment do not establish incompetency. See *People v. Lewis* (1981), 88 Ill. 2d 129, 155-57; *People v. Greer* (1980), 79 Ill. 2d 103, 122; *People v. Keagle* (1955), 7 Ill. 2d 408, 416.

The defendant argues that a motion to suppress would have been granted. We do not now address the merits of that issue because it is untimely. (*People v. Green* (1967), 36 Ill. 2d 349, 351; *People v. Harris* (1965), 33 Ill. 2d 389, *cert. denied* (1966), 383 U.S. 971, 16 L. Ed. 2d 311, 86 S. Ct. 1282.) We suggest, however, that the law on that question is not so clear as defendant indicates. The car was impounded when Williams was arrested and was searched two days later without a warrant. While the State does not concede there was no warrant, nothing indicates one existed. We assume here that one did not. Several cases cited by the State indicate a delayed warrantless search of an automobile at the station after a lawful arrest of the driver is constitutional. (*Chambers v. Maroney* (1970), 399 U.S. 42, 26 L. Ed. 2d 419, 90 S. Ct. 1975; see also *Colorado v. Bannister* (1980), 449 U.S. 1, 66 L. Ed. 2d 1, 101 S. Ct. 42; *Texas v. White* (1975), 423 U.S. 67, 46 L. Ed. 2d 209, 96 S. Ct. 304.) Defendant responds that the reasoning of *Coolidge v. New Hamp-*

*shire* (1971), 403 U.S. 443, 29 L. Ed. 2d 564, 91 S. Ct. 2022, demands that this delayed search be held unconstitutional and its fruits suppressed. (See also *Arkansas v. Sanders* (1979), 442 U.S. 753, 61 L. Ed. 2d 235, 99 S. Ct. 586; *United States v. Chadwick* (1977), 433 U.S. 1, 53 L. Ed. 2d 538, 97 S. Ct. 2476.) Even if we concede, for the argument, that there was no probable cause to arrest Williams and impound his car initially, probable cause did arise that evening when Paula Gray talked to the police and when McCraney, the following day, identified the car. The question thus presented would be whether *Chambers* would allow a warrantless search of an impounded vehicle when probable cause develops after impoundment. We are not so certain of the resolution of this issue as to determine that counsel in this case was incompetent for not raising it. While his decision not to make a motion might have been an error in judgment, it does not establish incompetency. *People v. Washington* (1968), 41 Ill. 2d 16, 21; *People v. Green* (1967), 36 Ill. 2d 349, 351; *People v. Palmer* (1963), 27 Ill. 2d 311, 314.

82-1691

No. \_\_\_\_\_



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IN THE  
SUPREME COURT OF THE UNITED STATES  
October Term, 1982

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PEOPLE OF THE STATE OF ILLINOIS,

Petitioner,

vs.

DENNIS WILLIAMS,

Respondent.

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RESPONSE TO PETITION FOR A WRIT OF CERTIORARI  
TO THE ILLINOIS SUPREME COURT

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ROBERT W. HALLOCK\*  
Kirkland & Ellis  
200 East Randolph Drive  
Suite 6000  
Chicago, Illinois 60601  
Attorney for Respondent

SYDNEY BOSWORTH MCDOLE  
HELEN E. WITT  
Kirkland & Ellis  
200 East Randolph Drive  
Suite 6000  
Chicago, Illinois 60601  
Of Counsel

\* Counsel of Record  
(312) 861-2042

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QUESTION PRESENTED FOR REVIEW

Whether the Illinois Supreme Court properly reversed a judgment sentencing respondent to death and remanded the case for a new trial on the ground that respondent had been denied effective assistance of counsel where numerous examples of his attorney's incompetence were cited and where his attorney was involved in disciplinary proceedings at the time of the criminal trial and subsequently was disbarred.

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IN THE  
SUPREME COURT OF THE UNITED STATES  
October Term, 1982

NO. \_\_\_\_\_

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PEOPLE OF THE STATE OF ILLINOIS,

Petitioner,

vs.

DENNIS WILLIAMS,

Respondent.

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RESPONSE TO PETITION FOR A WRIT OF CERTIORARI  
TO THE ILLINOIS SUPREME COURT

Respondent Dennis Williams respectfully prays that this Court deny petitioner's writ of certiorari to review the judgment and opinion of the Illinois Supreme Court in this matter.

OPINIONS BELOW

After a trial in the Circuit Court of Cook County, Illinois, respondent was convicted of murder, aggravated kidnapping and rape in October 1978. On February 6, 1979, he was sentenced to death by electrocution. On April 16, 1982, the Illinois Supreme Court affirmed the conviction and imposition of the death penalty. The court's opinion was withdrawn after respondent successfully petitioned for a rehearing.

On November 18, 1982, the Illinois Supreme Court reversed respondent's conviction and remanded the matter for a new trial. The court's opinion is reported at 93 Ill.2d 309, 444 N.E.2d 136, and appears as Appendix A to the petition for certiorari.

On January 28, 1983, the Illinois Supreme Court denied petitioner's request for a new hearing.

#### JURISDICTION

Petitioner served a copy of its petition on respondent 60 days after the order of the Illinois Supreme Court denying petitioner's request for a new hearing.

#### CONSTITUTIONAL PROVISION AT ISSUE

Petitioner contends that the Sixth Amendment's guarantee of assistance of counsel is at issue. In fact, the opinion below does not state that the Illinois Supreme Court was relying upon the United States Constitution. Nor does the Illinois Supreme Court opinion expressly rely upon the Constitution of the State of Illinois, Article I, Section 8, providing for the right of the accused in criminal prosecutions to be defended by counsel. We believe that the decision below involved no federal or state constitutional provision directly, but reflected the exercise by the Illinois Supreme Court of its general supervisory powers over Illinois state courts and over Illinois attorneys.

#### STATEMENT OF THE CASE

This case concerns the criminal trial of respondent for murder, kidnapping and rape. Respondent was found guilty and subsequently was sentenced to death. Archie Weston, the attorney who represented respondent at trial, also represented one of the State's original witnesses against respondent. During his defense of respondent, Mr. Weston was involved in other matters which eventually led to his disbarment by the Illinois Supreme Court.

#### Proceedings in the Trial Court

On May 12, 1978, Carol Schmal and Larry Lionberg were found dead in East Chicago Heights, Illinois. Both had been shot and Schmal had been raped.



Shortly thereafter, Dennis Williams, Willie Rainge and Kenneth Adams were arrested and charged with murder, kidnapping and rape. An attorney named Archie Weston represented Williams and Rainge in connection with these charges. Adams was represented by another attorney. Adams' girlfriend Paula Gray initially testified before a grand jury against these defendants but later recanted her testimony at the preliminary hearing. Gray was then indicted for the same offenses as well as for perjury. Weston also was retained to represent Gray. The defendants were tried in September and October 1978 in the same courtroom but before two separate juries; one jury heard evidence relevant to Gray, while the other heard evidence relevant to the remaining defendants.

The petition for certiorari recounts the evidence presented against respondent at trial in some detail. We believe that such a summary is neither necessary nor appropriate to this petition, and we do not respond except to state that the evidence upon which petitioner relied at trial was wholly circumstantial. That evidence was so tenuous and fraught with legal problems that effective counsel should have been able to exclude or discredit most of it. For example:

1. The three Caucasian hairs which the Illinois Supreme Court characterized as "perhaps crucial" to petitioner's case were obtained after a second warrantless search of respondent's automobile. Respondent's counsel never moved to quash that evidence on the ground that it had been obtained illegally.

2. Petitioner's key witness Charles McCraney, who supposedly saw Williams enter the premises in question at the time of the crime, related a bizarre story at trial which competent counsel probably could have discredited by effective cross-examination or by a prior statement made

by the witness within a few days after the murder. McCraney testified several times under oath that he had given such a statement, but petitioner never produced it in discovery. Respondent's counsel failed to demand a full evidentiary hearing for the purpose of discovering the existence of the written statement.

3. Petitioner provided prejudicial material to respondent's jury which was intended to make the jurors aware that Gray had accused her co-defendants. Respondent's attorney did not object and took no steps to prevent this material from being given to the jury.

Respondent was found guilty of murder, kidnapping and rape at the conclusion of the trial, and later was sentenced to death.

#### Appeal to the Illinois Supreme Court

On appeal directly to the Illinois Supreme Court, respondent argued, among other things, that he had been denied effective assistance of counsel for the reasons listed above as well as on numerous other grounds. The Illinois Supreme Court initially denied the appeal with a vigorous dissent by Justice Seymour Simon, who believed that respondent had been denied his right to counsel. Subsequently, the court granted respondent's petition for rehearing and specifically requested comments from counsel concerning the relevance of a disciplinary proceeding against respondent's attorney.

#### In Re Weston

Archie Weston represented respondent during the period from May 15, 1978, when he first appeared as respondent's attorney, through February 6, 1979, when respondent was sentenced to death. Respondent's trial took place between September 14 and October 20, 1978, and the death penalty hearing was held between January 8 and January 31, 1979. Through-

out this same period, Weston was involved in proceedings before the Attorney Registration and Disciplinary Commission of the Illinois Supreme Court arising from charges that he neglected an estate matter in which he had been retained as administrator. These proceedings eventually resulted in Weston's disbarment.

Investigation into Archie Weston's conduct as administrator of the estate began before he became respondent's attorney. In April 1978, a complaint against Weston was filed with the Disciplinary Commission on behalf of the heirs. The Commission wrote to Weston on April 13 and again on May 3, 1978, requesting him to respond to the charges. On August 21, 1978, the Commission notified the probate judge of the charges made concerning Weston's handling of the estate, and on August 25, 1978, the probate court ordered Weston to appear on September 21, 1978 to show cause why he should not be held in contempt for his neglect of the estate. Mr. Weston obtained a continuance to November 3, 1978, but when he failed to appear on that date, he was removed as administrator of the estate. See In Re Weston, 92 Ill.2d 431, 442 N.E.2d 236 (1982).

During oral argument in In Re Weston, counsel for Weston advised the Illinois Supreme Court that in late 1978 "things fell apart in a certain sense" for Weston, and acknowledged that Weston "had perhaps been over-extending himself". Weston claimed that he "was under such emotional stress that he did not feel mentally or physically capable of presenting his case before the Hearing Board or the Review Board" of the Disciplinary Commission. In Re Weston, 92 Ill.2d at 436.

In recommending that Weston be disbarred, the Commission's Hearing Board made the following findings:

The record establishes, and this Hearing Panel finds, that [Weston] neglected legal matters entrusted to him, committed acts which are prejudicial to the administration of justice and intentionally caused damage and prejudice to the Estate of Ella C. Graham and commingled and converted funds belonging

to a client, all in violation of the Disciplinary Rules cited in the complaint. See In Re Weston, 92 Ill.2d at 436.

The Hearing Board found that from June 1975 to November 1978, Weston had failed to collect rents and to pay taxes on real estate owned by the decedent, resulting in the loss of the property by the estate, and that during the same period of time he failed to file any estate inventory or accounts in the probate court. The Board also found that between November 1978 and June 1979, Weston failed to comply with certain orders of the probate court. The Board further determined that Weston had obtained possession of estate funds and converted these funds to his own use. These findings were affirmed and the Illinois Supreme Court disbarred Archie Weston.

Moreover, Weston was suspended from the practice of law by the Illinois Supreme Court in 1980 because of his refusal to respond to subpoenas regarding three other complaints filed against him. In Re Weston, 92 Ill.2d at 439. Although the nature of these complaints is not disclosed by the present record, the Illinois Supreme Court was advised by Weston's counsel during oral argument that the complaints related to the years 1978 through 1980, the period during which Weston also represented respondent Dennis Williams.

#### Rehearing

In view of the new evidence relating to these charges against Weston in other matters but pending at the same time as the criminal trial of respondent, and in light of the numerous examples of incompetence cited by respondent on appeal, the Illinois Supreme Court concluded in its November 18, 1982 opinion that the interests of justice required the prior judgment to be reversed and the case to be remanded for a new trial.

ARGUMENT: REASONS FOR DISALLOWING THE WRIT

There is no special or important reason for this Court to grant certiorari and to review the decision of the Illinois Supreme Court. None of the guidelines of Rule 17 of the Rules of this Court are met. The decision below does not conflict with the applicable decisions of another state court of last resort, or of a federal court of appeals, or of this Court.

- A. The Illinois Supreme Court Had Abundant Grounds to Reverse and Remand This Case for a New Trial Because Respondent Had Been Denied Effective Assistance of Counsel.

Petitioner describes the decision of the Illinois Supreme Court in this case as "irrational" because, according to petitioner, it holds that "the mere filing of complaints concerning the conduct of a defense attorney in an unrelated matter [is] enough to prove incompetence in a criminal case." (Petition at 8) Petitioner's characterization is incorrect. The Illinois Supreme Court made no such statement, nor can its decision be read broadly to stand for such a proposition.

In fact, the Illinois Supreme Court repeatedly emphasized that the unique circumstances of this case weighed heavily in its decision. Consequently, the holding of the court below must be construed narrowly. Chief among those unique circumstances was the fact that respondent was on trial in a very serious criminal case which could, and did, lead to the imposition of the death penalty. Secondly, respondent's attorney, throughout his defense of respondent, faced a disciplinary inquiry regarding charges of gross neglect, misconduct and incompetence, which charges were well founded according to the Illinois Supreme Court. It was on the basis of these charges that respondent's counsel subsequently was found to be incompetent and was disbarred.

The decision below, therefore, certainly does not hold that a defendant's Sixth Amendment right to counsel is violated whenever it can be shown that a complaint of misconduct is pending against his attorney. Rather, the decision reflects the exercise by the Illinois Supreme Court of its general supervisory powers over Illinois state courts as well as over Illinois attorneys and its powers of review in a unique case. The court had carefully reviewed the record in respondent's criminal trial, had considered respondent's arguments that he had been denied effective assistance of counsel, and was familiar with the facts surrounding the investigation of Archie Weston's professional conduct. In light of all these particular circumstances, the court concluded that the interests of justice required respondent to be granted a new trial.

Petitioner also asserts that there was "no evidence" that the matters connected with the disciplinary and disbarment proceedings affected Weston's representation of respondent. (Petition at 8) This likewise is untrue.

Weston was found to have neglected legal matters entrusted to him, to have committed acts prejudicial to the administration of justice and acts which intentionally caused damage and prejudice to his client in the estate matter. The Illinois Supreme Court obviously believed that Weston's conduct was serious enough to warrant disbarment. The court also believed, given the totality of the evidence, that this same misconduct could have recurred in Weston's handling of respondent's defense:

Nevertheless, because of the newly acquired information concerning Williams' counsel, which we have concluded may well have had an effect on counsel's ability to represent his client in the trial of this capital case, we can no longer say, with any degree of assurance, that Williams received the effective assistance of counsel guaranteed by the Constitution. (Petitioner's Appendix at 12a)



The finding of the Illinois Supreme Court that during this same period of time Weston had been negligent in another legal matter, and the existence of several other complaints against him, led the court to believe that Weston was unable to afford his clients competent representation.

The Illinois Supreme Court also was confronted with numerous examples of Weston's incompetence during respondent's criminal trial. On appeal, respondent had pointed to many instances of inaction by his attorney to demonstrate that he was denied the effective assistance of counsel. (See the listing of some of these examples by the Illinois Supreme Court in Petitioner's Appendix at 12a-13a.) The court concluded that these examples reflected not simple errors in judgment, but gross incompetence similar to that which Weston exhibited in handling the estate matter:

However, we are now aware, for the first time, of the unique circumstances under which counsel in this case was operating at the time of the capital trial. In light of these facts, we can no longer characterize counsel's decision not to make the motion to suppress the hair evidence or to take other action in his client's behalf as professional misjudgments made with full knowledge of the applicable law and the facts. Moreover, while we do not believe that the burden of defending three clients for capital murder before two juries, standing alone, necessarily reduced counsel's effectiveness, that fact in view of the new information now before us cannot be disregarded. (Petitioner's Appendix at 13a)

The Illinois Supreme Court thus had ample reason to believe that respondent may have been deprived of his right to counsel in the present case.

During the months immediately preceding the commencement of respondent's trial, when Weston should have been investigating and preparing the defense, he was himself under investigation by the Disciplinary Commission and was under court order to account for his handling of the estate matter on charges of neglect which subsequently were found to be true. The same neglect pervaded Weston's defense of respondent. For

example, when Weston was ordered to trial on September 14, 1978, he repeatedly protested that he was not ready for trial, stating at one point: "...there's been no preparation by defense counsel. None. None whatsoever".

The right of an accused to effective assistance of counsel is fundamental. In the present case, respondent was defended by an attorney whose negligence and misconduct in another case was established and resulted in disbarment. The matters disclosed by the record and proceedings in In re Weston cast serious doubt upon the fairness of respondent's trial and the integrity of the resulting verdicts. While such doubts would be intolerable in any case, they are particularly so in this, a capital case rife with examples of incompetence and neglect. The Illinois Supreme Court therefore had ample grounds to reverse respondent's conviction and remand the case for a new trial.

B. This Case Is Distinguishable from United States v. Cronic.

Petitioner cites as "[t]he first reason why certiorari should be granted" the fact that this Court recently took jurisdiction in United States v. Cronic, 51 U.S.L.W. 3611 (No. 82-660 Feb. 22, 1983). (Petition at 6) The grant of certiorari in that case, however, provides no justification for reaching the same result in this matter since the facts and the reasoning of the courts are entirely different in the two cases.

The tersely worded decision of the Court of Appeals for the Tenth Circuit in United States v. Cronic, 675 F.2d 1126 (10th Cir. 1982), held that the defendant was not adequately represented in a criminal prosecution for mail fraud and unlawful use of a fictitious name. The court apparently ignored any evidence as to how counsel actually performed in conducting the defense; the court did not rely on or even mention a single



error committed by Cronic's attorney in representing his client. Indeed, the Court of Appeals expressly endorsed the principle that "when circumstances hamper a given lawyer's preparation of a defendant's case, the defendant need not show specified errors in the conduct of his defense in order to show ineffective assistance of counsel." 675 F.2d at 1128. In support of its decision, the court noted only that the length of time for trial preparation and the potential criminal sentence were similar to those at issue in prior cases decided by that court finding a violation of the Sixth Amendment right to assistance of counsel. No explanation was given, however, as to how Cronic's counsel was "hampered" in the conduct of his defense.

In contrast, counsel for respondent in this case has been found to be incompetent and has been disbarred by the Illinois Supreme Court. Respondent's counsel was under investigation at the time that he was supposed to be fighting for defendant's life. The Illinois Supreme Court certainly did not ignore -- nor did it believe it could ignore -- the actual performance of respondent's counsel at trial. Instead, the court expressly referred to counsel's "decision not to make the motion to suppress the hair evidence" and to numerous other omissions as evidence of his inability properly to defend his client. (Petitioner's Appendix at 12a-14a) Thus, unlike the court in Cronic, the Illinois Supreme Court had abundant grounds for finding that respondent had not received effective assistance of counsel.

C. The Standards for Effective Assistance of Counsel Are Clear and the Illinois Supreme Court's Decision Is Not in Conflict with These Standards.

As petitioner correctly points out, this Court has held that a violation of the right to effective assistance of counsel will not be assumed, but must be demonstrated. Cuyler

v. Sullivan, 446 U.S. 335 (1980). (Petition at 9) This standard clearly has been met in the present case. That respondent was denied effective assistance of counsel was demonstrated not by Weston's failure to make one particular motion, but by numerous examples of incompetence and inaction, including:

-- Following its review of a detailed record, the Illinois Supreme Court found respondent's attorney guilty of gross misconduct and prohibited him from practicing law because of his handling of an estate matter as well as for his failure to respond to complaints against him in three other matters. The charges of misconduct against respondent's attorney were pending against counsel during the defense of respondent in the capital case.

-- The Illinois Supreme Court noted that respondent had cited numerous instances of inaction by his counsel and concluded that these instances could not be characterized merely as professional misjudgments, such as:

the failure to make a motion to suppress the physical evidence seized from Williams' car -- evidence which was perhaps crucial to the State's case; the failure to object to the testimony concerning the Canadian study on hair comparisons; the failure to object to prejudicial material received by Williams' jury which it is alleged was designed to insure that the jurors would know that Paula Gray had accused her codefendants; the failure to object to the rebuttal testimony of the 11-year-old boy; the failure to object to the information imparted to the jury concerning the manner in which its verdict would be reviewed; the failure to object to testimony concerning the good character of the decedents; the failure to demand a full evidentiary hearing for the purpose of discovering the existence of a written statement allegedly made by Charles McCraney within a few days of the murder; and the failure to make a motion for a new trial. (Petitioner's Appendix at 12a-13a)

-- The Illinois Supreme Court held that the burden of defending three clients for capital murder simultaneously before two juries may have reduced counsel's effectiveness.

The court below, therefore, correctly concluded that respondent's right to effective assistance of counsel had been violated because of the incompetence of his attorney.

Petitioner tells this Court that "[t]he Illinois Supreme Court follows a different standard depending on whether counsel is retained or appointed." (Petition at 11) While Illinois courts may have made some distinction in the past, at least as a matter of semantics, between the standards for judging retained and appointed counsel, any such distinction has been abolished. In People v. Scott, 94 Ill.App.3d 159, 418 N.E.2d 805 (5th Dist. 1981), for example, an Illinois appellate court held that a double standard for judging the effectiveness of counsel was impermissible in light of this Court's decision in Cuyler v. Sullivan, 446 U.S. 335 (1980). The same result was reached by another Illinois appellate court in People v. Berger, 109 Ill.App.3d 1054, 441 N.E.2d 915 (2d Dist. 1982).

The Illinois Supreme Court has not addressed that precise issue since the decision in Cuyler, nor is that issue relevant to the present case. Indeed, the court expressly eschewed applying any particular standard or test in this matter because of the unusual underlying facts, and relied instead on its role as the highest court in the State of Illinois to administer justice in an extraordinary case. With full knowledge of the records in respondent's criminal prosecution as well as in In Re Weston, the Illinois Supreme Court reached its decision that the interests of justice required respondent to be granted a new trial on the basis of "the unique circumstances and sequence of events in this capital case" which it believed "will rarely, if ever, be duplicated." (Petitioner's Appendix at 14a) The unique circumstances of this case, therefore, render it unsuitable for review for the purpose of determining whether any applicable standard has been misapplied.

Finally, petitioner urges this Court to assert jurisdiction in the present case in order to establish "a single definite standard for judging the adequacy of representation by counsel in a criminal case." (Petition at 10) We submit that even assuming that a single standard can or should be defined for use in all cases, this case is a particularly inapt vehicle for formulating such a universally applicable standard.

D. This Case Does Not Present a Federal Question.

Petitioner assumes that the Illinois Supreme Court based its decision on its interpretation of the Sixth Amendment to the United States Constitution, although petitioner acknowledges that the court did not specify whether it was referring to the United States Constitution or to the Constitution of the State of Illinois, Article I, Section 8, which provides that "the accused shall have the right to defend by counsel." (Petition at 12-13)

In reaching its decision in this case, the Illinois Supreme Court did not rely expressly either on the federal or on the state constitution. The decision below results from the fact that the Illinois Supreme Court was the forum most familiar with the background facts relating not only to respondent's criminal prosecution, but also to the professional misconduct and disbarment proceedings of respondent's attorney. The decision likewise reflects the Illinois Supreme Court's responsibility to supervise the practice of law by Illinois attorneys and its role as the court of last resort in Illinois with the authority under Rule 615 of the Illinois Supreme Court Rules, Ill. Rev. Stat. ch. 110A, §615, to review criminal cases and to ensure that the interests of justice are served. Faced with a unique fact situation in an unusual case, the Illinois Supreme Court found that the interests of justice required a new trial for respondent. It was a conclusion based purely on a peculiar

fact situation and internal state administrative considerations, with no possible federal ramifications.

Under these circumstances, this Court should decline to review the Illinois Supreme Court's decision, and assume that the decision rests on the narrowest possible ground -- the Illinois Supreme Court's exercise of its inherent supervisory powers over the Illinois state courts and Illinois attorneys.

E. The Existence of Post-Conviction Remedies Provides No Justification for the Grant of Certiorari.

Petitioner argues that even if respondent's conviction is affirmed, he "will still have the right to hearings in both state and federal court in which he may attempt to show actual incompetence on the part of his trial counsel." (Petition at 13) This argument is irrelevant and inappropriate in a petition for certiorari.

Moreover, respondent's alternatives are not as broad as petitioner suggests. As the very case cited in the petition makes clear, under the Illinois Post-Conviction Hearing Act, Ill. Rev. Stat. 1981, ch. 38, §122-1, respondent can raise only those issues which were not raised or could not have been raised on appeal, and which were not part of the record in the case. People v. Thomas, 38 Ill.2d 321, 231 N.E.2d 436 (1967). The availability of a federal habeas corpus proceeding likewise is narrowly restricted to cases in which particular showings can be made. 28 U.S.C. §2254(d).

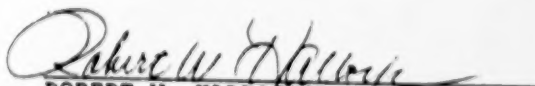
Petitioner in effect asks this Court to set aside the decision of the Illinois Supreme Court, which was familiar with this case as well as with the Archie Weston disbarment matter, and to start the proceeding over again in another forum and with a more limited scope. The Illinois Supreme Court already has fully considered all the circumstances relevant to respondent's claim, found the claim meritorious, and vacated respon-

dent's conviction in the interests of fundamental fairness and justice. The question of the competence of respondent's counsel properly was before the Illinois Supreme Court, and the court reached a valid conclusion. To argue that that decision now should be reconsidered because the same claim could be presented to yet another court or courts is nonsensical. Petitioner's suggestion undermines the policy of judicial economy and serves no purpose other than to require respondent to remain in prison for a longer time while he seeks vindication of the violation of his rights.

#### CONCLUSION

For the foregoing reasons, respondent respectfully prays that petitioner's request for issuance of a writ of certiorari be denied.

Respectfully submitted,



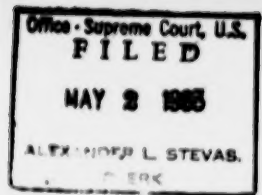
ROBERT W. HALLOCK\*  
Kirkland & Ellis  
200 East Randolph Drive  
Suite 6000  
Chicago, Illinois 60601  
Attorney for Respondent

SYDNEY BOSWORTH MCDOLE  
HELEN E. WITT  
Kirkland & Ellis  
200 East Randolph Drive  
Suite 6000  
Chicago, Illinois 60601  
Of Counsel

\*Counsel of Record  
(312) 861-2042

Dated: April 28, 1983





82-1691

No. \_\_\_\_\_

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IN THE  
SUPREME COURT OF THE UNITED STATES  
October Term, 1982

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PEOPLE OF THE STATE OF ILLINOIS,

Petitioner,

vs.

DENNIS WILLIAMS,

Respondent.

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RESPONDENT'S MOTION FOR LEAVE  
TO PROCEED IN FORMA PAUPERIS

Respondent Dennis Williams moves this Court for leave to proceed in forma pauperis as provided in Supreme Court Rule 46. The affidavit of Robert W. Hallock in support of this motion is attached.

Respectfully submitted,

ROBERT W. HALLOCK  
Kirkland & Ellis  
200 East Randolph Drive  
Suite 6000  
Chicago, Illinois 60601  
Attorney for Respondent

SYDNEY BOSWORTH McDOLLE  
HELEN E. WITT  
Kirkland & Ellis  
200 East Randolph Drive  
Suite 6000  
Chicago, Illinois 60601  
Of Counsel

Dated: April 28, 1983

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AFFIDAVIT OF ROBERT W. HALLOCK  
IN SUPPORT OF RESPONDENT'S MOTION  
TO PROCEED IN FORMA PAUPERIS

Robert W. Hallock, being first duly sworn, deposes  
and says:

1. I am a partner in the law firm of Kirkland & Ellis and I am counsel for respondent Dennis Williams in the above-entitled case.

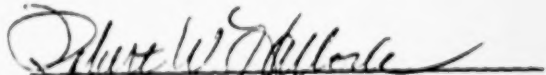
2. On July 15, 1982, I was appointed by Judge William T. Hart of the United States District Court for the Northern District of Illinois, Eastern Division, to represent respondent in a civil rights action which respondent had initiated pro se in that court entitled Dennis Williams vs. Marvin Reed, et al., No. 80C 3009. I presently am counsel of record for respondent in that case.

3. Subsequent to that appointment, the Illinois Supreme Court ordered a new criminal trial for respondent. Respondent requested that I represent him in his new trial. Consequently, I represent respondent pro bono in all matters arising from his criminal trial, including his response to the petition for certiorari which is now before this Court.



4. Respondent Dennis Williams is now and has been since 1978 incarcerated in state penitentiaries. He has not been employed during the past five years. He has no source of income.

5. Respondent is impoverished and is unable to pay the costs of this proceeding, including printing costs.



ROBERT W. HALLOCK  
Kirkland & Ellis  
200 East Randolph Drive  
Suite 6000  
Chicago, Illinois 60601  
Attorney for Respondent

SUBSCRIBED AND SWORN TO before me  
this 27th day of April, 1983.

  
NOTARY PUBLIC

MAY 19 PAGE 9

82-1691

No. \_\_\_\_\_

Office - Supreme Court, U.S.  
**FILED**  
MAY 18 1983  
ALEXANDER L. STEVENS,  
CLERK

IN THE  
SUPREME COURT OF THE UNITED STATES  
October Term, 1982

PEOPLE OF THE STATE OF ILLINOIS,

Petitioner,

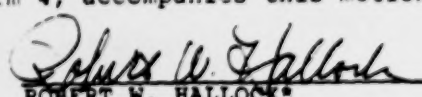
vs.

DENNIS WILLIAMS,

Respondent.

RESPONDENT'S MOTION FOR LEAVE  
TO PROCEED IN FORMA PAUPERIS

Respondent Dennis Williams hereby moves this Court for leave to proceed in forma pauperis as provided in Supreme Court Rule 46. Respondent's affidavit, in the form prescribed in Fed. Rules App. Proc., Form 4, accompanies this motion.

  
ROBERT W. HALLOCK\*  
Kirkland & Ellis  
200 East Randolph Drive  
Suite 6000  
Chicago, Illinois 60601  
Attorney for Respondent

SYDNEY BOSWORTH McDOLLE  
HELEN E. WITT  
Kirkland & Ellis  
200 East Randolph Drive  
Suite 6000  
Chicago, Illinois 60601  
Of Counsel

\* Counsel of Record  
(312) 861-2042

Dated: May 17, 1983

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IN THE  
SUPREME COURT OF THE UNITED STATES  
October Term, 1982

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PEOPLE OF THE STATE OF ILLINOIS,

Petitioner,

vs.

DENNIS WILLIAMS,

Respondent.

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AFFIDAVIT IN SUPPORT OF RESPONDENT'S  
MOTION TO PROCEED IN FORMA PAUPERIS

I, Dennis Williams, being first duly sworn, depose and say that I am the Respondent in the above-entitled case; that in support of my motion to proceed without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; and that I believe I am entitled to prevail.

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the costs of this proceeding are true.

1. Are you presently employed?

No.

If the answer is no, state the date of your last employment and the amount of the salary and wages per month which you received. April 16, 1978 - attended

CETA Government Educational Program from approximately  
Sept. 8th, 1977 to April 16, 1978, earning approximately  
\$1400 in total; salary per week two weeks varied.

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other source?  
No.
3. Do you own any cash or checking or savings account?  
No.
4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?  
No.
5. List the persons who are dependent upon you for support and state your relationship to those persons.  
None.

I understand that a false statement or answer to any question in this affidavit will subject me to penalties for perjury.

SUBSCRIBED AND SWORN TO  
before me this 12  
day of May, 1983.

Dennis Williams  
DENNIS WILLIAMS #C-63823  
Box 99, N.C. #115 - Pontiac State Prison  
Pontiac, Illinois 61764

Let the applicant proceed  
without prepayment of costs  
or fees or the necessity  
of giving security therefor.

David J. [Signature]